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Attorneys for Defendant and Counterclaim Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

MULTI-VET LTD.,	)	
	)	
	)	
Plaintiff/Counterclaim Defendant,	)	CIVIL ACTION No. 08-cv-03251 (LMM)
	)	JURY DEMANDED
v.	)	
	)	
PREMIER PET PRODUCTS, INC.,	)	
	)	
	)	
Defendant/Counterclaim Plaintiff.	)	

**PREMIER PET PRODUCTS, LLC'S AMENDED ANSWER AND COUNTERCLAIMS**

Defendant Premier Pet Products, LLC (hereinafter "Premier") hereby answers Plaintiff Multi-Vet Ltd.'s (hereinafter "Multi-Vet") Complaint as follows:

1. Premier is without sufficient knowledge to admit or deny the allegations of Paragraph 1, and therefore denies Paragraph 1.
2. The allegations contained in Paragraph 2 are denied.
3. Premier states that the proper name of the Defendant is Premier Pet Products, LLC. The remaining allegations contained in Paragraph 3 are admitted.
4. The allegations contained in Paragraph 4 are admitted.

**JURISDICTION AND VENUE**

5. Premier admits that this is an action under the statutes cited in Paragraph 5 but denies the remaining allegations of Paragraph 5.

6. The allegations contained in Paragraph 6 are admitted.

7. The allegations contained in Paragraph 7 are denied.

8. The allegations contained in Paragraph 8 are denied.

**FACTS COMMON TO ALL CAUSES OF ACTION**

9. The allegations contained in Paragraph 9 are denied.

10. The allegations contained in Paragraph 10 are denied.

11. The allegations contained in Paragraph 11 are denied.

12. The allegations contained in Paragraph 12 are admitted.

13. Premier admits that the mark that is the subject of U.S. Trademark Registration No. 2,762,487 is valid, but denies that Multi-Vet owns the registration.

14. The allegations contained in Paragraph 14 are denied.

15. The allegations contained in Paragraph 15 are denied.

16. Premier admits that it sells dog training collars, and except as so admitted, denies the remaining allegations of Paragraph 16.

**FIRST CLAIM SEEKING  
INJUNCTIVE RELIEF FOR  
TRADEMARK INFRINGEMENT (15 U.S.C. §1114)**

17. Premier repeats its responses to the allegations in Paragraphs 1 through 16 above.

18. The allegations contained in Paragraph 18 are denied.

19. The allegations contained in Paragraph 19 are denied.

20. The allegations contained in Paragraph 20 are denied.

21. The allegations contained in Paragraph 21 are denied.

22. The allegations contained in Paragraph 22 are denied.

**SECOND CLAIM SEEKING INJUNCTIVE  
AND MONETARY RELIEF FOR FALSE DESIGNATION OF  
ORIGIN IN VIOLATION OF 15 U.S.C. §1125(a)**

23. Premier repeats its responses to the allegations in Paragraphs 1 through 22 above.

24. The allegations contained in Paragraph 24 are denied.

25. The allegations contained in Paragraph 25 are denied.

26. The allegations contained in Paragraph 26 are denied.

27. The allegations contained in Paragraph 27 are denied.

**THIRD CLAIM SEEKING  
INJUNCTIVE AND MONETARY RELIEF FOR UNFAIR  
COMPETITION IN VIOLATION OF THE COMMON LAW**

28. Premier repeats its responses to the allegations in Paragraphs 1 through 27 above.

29. The allegations contained in Paragraph 29 are denied.

30. The allegations contained in Paragraph 30 are denied.

31. The allegations contained in Paragraph 31 are denied.

32. The allegations contained in Paragraph 32 are denied.

33. The allegations contained in Paragraph 33 are denied.

34. The allegations contained in Paragraph 34 are denied.

35. The allegations contained in Paragraph 35 are denied.

**AFFIRMATIVE DEFENSES**

36. Without admitting any of the allegations of the Complaint, Premier alleges as

follows:

**FIRST AFFIRMATIVE DEFENSE**

37. Defendant, not Plaintiff, owns U.S. Trademark Registration No. 2,762,487.

**SECOND AFFIRMATIVE DEFENSE**

38. Plaintiff has failed to state a claim upon which relief may be granted.

**THIRD AFFIRMATIVE DEFENSE**

39. Plaintiff's claims are barred under the doctrines of laches, estoppel, abandonment, waiver and acquiescence.

**FOURTH AFFIRMATIVE DEFENSE**

40. Plaintiff has not suffered any damages as a result of the alleged acts. Plaintiff would be unjustly enriched if allowed to recover all or any part of the damages or remedies alleged in the Complaint.

**COUNTERCLAIMS**

For its counterclaims against Counterclaim Defendant Multi-Vet Ltd., ("Multi-Vet"), Counterclaim Plaintiff Premier Pet Products, LLC ("Premier") demands a trial by jury and alleges upon knowledge as to its own acts and upon information and belief as to acts of others that:

**THE PARTIES**

1. Premier is a Virginia corporation with a principal place of business at 14201 Sommerville Ct., Midlothian, VA 23113-6884.
2. Multi-Vet is a Canadian limited liability company with an office at 17420 rue Centrale, Saint-Hyacinthe, Quebec, Canada J2T 3L7.

### **JURISDICTION AND VENUE**

3. This is an action for trademark infringement under the Lanham Act, 15 U.S.C. § 1051 *et. seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over Multi-Vet in that, *inter alia*, Multi-Vet voluntarily filed a Complaint in this Court to which these Counterclaims are directed.

5. Venue is proper in this district because the Counterclaims relate to the Complaint already pending in this district.

### **FACTUAL ALLEGATIONS**

6. Pursuant to a Technology License and Distribution Agreement dated April 30, 2001, Premier sold dog training collars that incorporated the technology subject of Multi-Vet's U.S. Patent No. 4,627,385 in the United States.

7. Pursuant to that Technology License and Distribution Agreement, Multi-Vet would register on Premier's behalf any new trademarks adopted by Premier for Premier's use and sale of those dog training collars in the United States.

8. Under that Technology License and Distribution Agreement, any U.S. trademark registration that Multi-Vet registered based on Premier's creation and use would be assigned to Premier upon termination of the parties' relationship.

9. To that end, the GENTLE SPRAY mark, among others, were adopted by Premier after the April 30, 2001 Agreement for Premier's use and sale of dog training collars that incorporated technology subject of Multi-Vet's U.S. Patent No. 4,627,385.

10. On Premier's behalf, and based on Premier's use and development of the GENTLE SPRAY mark, Multi-Vet filed and obtained U.S. Trademark Registration No. 2,762,487.

11. When the parties' relationship ended in or around July 2007, no assignment, including the assignment of U.S. Trademark Registration No. 2,762,487, was ever executed or recorded with the United States Patent and Trademark Office.

12. Multi-Vet thereafter started use of the GENTLE SPRAY trademark and other Premier marks in or around May 2008 when it began advertising, promoting and selling dog collars under the GENTLE SPRAY name and in packaging confusingly similar to that of Premier's in the United States.

13. An example of Premier's packaging and use of the GENTLE SPRAY mark appears on Exhibit A. The Multi-Vet packaging and use of the GENTLE SPRAY mark, as recently created and used in the United States as of May 2008, appears on Exhibit B.

**COUNT I**  
**INFRINGEMENT OF FEDERAL TRADEMARK REGISTRATION NOS. 2,762,487 and**  
**2,685,911**

14. Premier hereby realleges and incorporates by reference the allegations of Paragraphs 1-13 of this Counterclaim as if fully set forth herein.

15. Premier is the lawful owner of U.S. Trademark Registration No. 2,762,487 for the mark GENTLE SPRAY, and of other marks now on the Principal Register and at common law, including but not limited to U.S. Trademark Registration No. 2,685,911 for the mark NO SHOCK NO PAIN and design, as used on the packaging of anti-bark collars and other products.

16. Multi-Vet's use of Premier's GENTLE SPRAY mark, NO SHOCK NO PAIN mark, and other marks in connection with sales and advertising of pet products in interstate commerce is unauthorized and without permission.

17. Multi-Vet's use of Premier's GENTLE SPRAY mark, NO SHOCK NO PAIN mark, and other marks is likely to cause confusion, mistake, or deception in violation of 15 U.S.C. § 1114(a).

**COUNT II**  
**FALSE DESIGNATION OF ORIGIN UNDER 15 U.S.C. 1125(A)**

18. Premier hereby realleges and incorporates by reference the allegations of paragraphs 1-17 of this Counterclaim as if fully set forth herein.

19. Multi-Vet has used Premier's GENTLE SPRAY mark, NO SHOCK NO PAIN mark, and other Premier designations and marks in connection with sales and advertising of pet products in interstate commerce, without permission.

20. Multi-Vet's use of Premier's GENTLE SPRAY designation, NO SHOCK NO PAIN designation, and other Premier designations and marks is likely to cause confusion and to cause mistake, and to deceive as to the affiliation, connection or association of Multi-Vet's products with Premier and as to the origin, sponsorship, or approval of Multi-Vet's products and commercial activities by Premier.

21. Multi-Vet's wrongful activities have caused, and will continue to cause, harm to Premier.

**COUNT III**  
**COMMON LAW UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT**

22. Premier hereby realleges and incorporates by reference the allegations of paragraphs 1-21 of this Counterclaim as if fully set forth herein.

23. Multi-Vet's activities as stated herein constitute unfair competition and trademark infringement in violation of Premier's common law rights within the State of New York and in violation of New York law.

24. Multi-Vet's wrongful and infringing activities have caused, and will continue to cause, harm to Premier if not enjoined.

25. Multi-Vet's acts were taken in deliberate, willful and intentional disregard of Premier's rights.

**PRAYER FOR RELIEF**

WHEREFORE, Premier prays that the Court enter an Order:

A. For Judgment in Premier's favor on its claims of trademark infringement, false designation of origin and unfair competition.

B. For Judgment dismissing Multi-Vet's claims with prejudice.

C. Permanently enjoining Multi-Vet, its agents, servants, employees, successors and assigns and all others in concert and privity with them from using Premier's marks, including but not limited to the GENTLE SPRAY mark and the NO SHOCK NO PAIN mark, in connection with pet products, particularly dog training collars.

D. Compelling Multi-Vet to execute the assignment for the GENTLE SPRAY mark to Premier, or, pursuant to 15 U.S.C. § 1119, directing the Director of the United States Patent and Trademark Office to correct the record for U.S. Trademark Registration No. 2,762,487 to list Premier as the Registrant of U.S. Trademark Registration No. 2,762,487.

E. Awarding all damages and items recoverable under 15 U.S.C. § 1117, including

(i) Multi-Vet's profits from use of Premier's marks; (ii) Premier's damages; (iii)

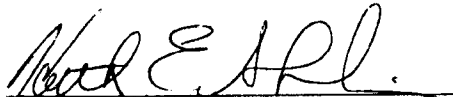
Premier's attorneys fees and costs; and (iv) treble damages.

F. Awarding any such further relief as this Court deems just and equitable.

KING & SPALDING LLP

DATE: June 11, 2008

By:



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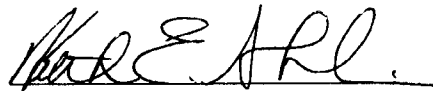
**Attorneys for Premier Pet Products, LLC**

**CERTIFICATE OF SERVICE**

It is hereby certified that true and correct copy of *Premier Pet Products, LLC's Amended Answer and Counterclaims* were served this day via U.S. mail delivery, in an envelope addressed to:

Lawrence E. Abelman  
Abelman, Frayne & Schwab  
666 Third Avenue  
New York, NY 10017

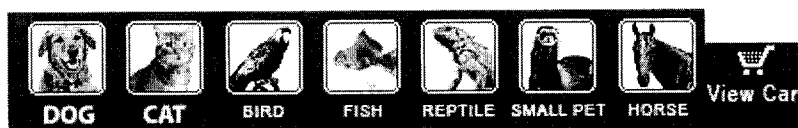
Dated: June 11, 2008

  
Keith E. Sharkin

# **EXHIBIT A**


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## Flea and Tick

- Advantage Flea Control for Dogs
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- Frontline Top Spot For Dogs
- Frontline Top Spot For Cats
- Frontline PLUS for Dogs
- Frontline PLUS for Cats
- Program Flea Control for Dogs
- Program Flea Control for Cats
- K9 ADVANTIX

## Nutrition

- Nutritional Supplements
- Arthritis and Joint Supplements

## Pet Care Products

- Shampoos and Sprays
- Ear & Eye Products
- Flea and Tick Collars

## Pet Medications

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## Pet Supplies

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- Vaccines
- Reptile Products
- Horses and Other Pets
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## Gentle Spray VALUE PACK


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Item #:	PREMGSCKIT
Item Rating:	Rate this item
Regular Price:	\$120.00
Sale Price:	<b>\$89.99</b>
Enter Quantity:	1

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### Description Customer Reviews



**SHIPS GROUND.** Please allow 4 to 7 business days for delivery to arrive.

The GentleSpray Value kit comes with the GentleSpray anti-bark collar that humanly teaches your dog not to bark and comes with everything you need to get started. This kit also comes with an additional 2 pack replacement batteries and 3 oz citronella refill bottles.

[See all GentleSpray products](#)

This item is **DISCONTINUED**. We apologize for any inconvenience. **Gentle Spray Value Pack** to stop problem barking of your dog.

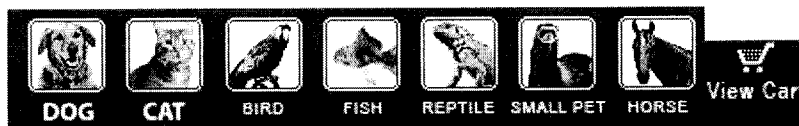
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## **EXHIBIT B**


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- Frontline Top Spot For Cats
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- Shampoos and Sprays
- Ear & Eye Products
- Flea and Tick Collars

## Pet Medications

- Dental Products
- Dewormers

## Pet Supplies

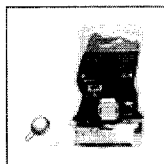
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## Multivet Gentle Spray Citronella Anti-Bark Co


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Item #: PREMIERGSC

Item Rating: Rate this item

Regular Price: \$85.99

Sale Price: \$49.99

Enter Quantity: 1

[Add To Cart](#)
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### Description Customer Reviews



**SHIPS GROUND.** Please allow 4 to 7 days for your order to arrive.

Immediately and humanely stop problem barking. This bark collar is for any breed of dog that is at least 6 months old and weighs 6 lbs. or more.

The Multivet Gentle Spray citronella Anti-Bark Collar is the most effective and humane solution for nuisance barking. Stop the problem barking! Recommended by leading veterinarians, behaviorists, and trainers. Gentle Spray uses ultrasonic technology to deliver a harmless burst of citronella spray that interrupts the barking. **It's two times more effective than shock collars.** The spray stimulates the dog's senses - he sees it, hears it, smells it and feels it.

**Includes:**

- anti-bark device (weighs 2.5 oz)
- citronella refill
- adjustable nylon collar
- 6-volt battery
- detailed instructions and lifetime warranty.

#### Customer Testimonial

We got one of these for our barker because a behaviorist advised us you can't argue barker when s/he's doing it. It works great and the dog smells terrific. Seriously, we know he will be in one of those situations where he is likely to bark, such as stran or a visit to a dog-friendly beach. The darn things are super-expensive, BUT **A)** they collar and **B)** they never fail, unlike dog whistles which are only useful on some dogs. while your dog is sitting on your lap wearing the collar, or you will get a dose, too.

E.Z.

Save even more, buy the value pack

#### Customers Who Bought This Item Also Bought

 <p><b>Multivet Spray Commander Remote Trainer</b></p> <p>Price: \$175.99</p> <p><b>Sale Price: \$116.99</b></p>	 <p><b>Premier Gentle Leader Calming Cap</b></p> <p>Price: \$19.95</p> <p><b>Sale Price: \$15.99</b></p>	<p><b>NEW! Aids</b></p> <p>Price: \$</p> <p><b>Sale Pr</b></p>
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